

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawaii**

File No.: HA-3386  
180-Day Exp. Date: May 8, 2007

March 23, 2007

**Board of Land and  
Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i**

**REGARDING:** Conservation District Use Application (CDUA) HA-3386  
Consolidation and Re-subdivision

**APPLICANT:** Leland Lensing Miller, et al.  
11575 Folsum Point Lane, Franktown, CO 80016

**AGENT:** Gregory R. Mooers, Mooers Enterprises LLC  
PO Box 1101, Kamuela, HI 96743

**LANDOWNER:** same as applicant

**LOCATION:** Puakea and Kukuipahu, North Kohala, Hawai'i

**TMK:** (3) 5-6-01:108, 109, 110

**AREA OF PARCEL:** 78.424 acres

**AREA OF USE:** same

**SUBZONE:** Resource

**DESCRIPTION OF AREA:**

The three subject properties are located on the northwest coast of Hawai'i in the Puakea and Kukuipahu ahupua'a, on the leeward side of North Kohala. The lots total 78.254 acres, and are bounded by the ocean to the west, Puakea Bay Ranch subdivision to the north, and Parker Ranch subdivision to the south.

The 21.323 acre parcel 01:110 lies entirely outside the Conservation District. The coastal areas of the 33.873-acre parcel 01:109 and the 23.228-acre parcel 01:108 lie in the Resource Subzone of the Conservation District (see **Exhibit 1**). The Conservation District boundary parallels the coast approximately 300 feet inland, according to a 2006 boundary interpretation from the Land Use Commission. As the shoreline is used as a basis for the boundary, a certified shoreline survey would be needed to determine a more precise location.

The subject parcels are in an area with a gentle slope, ranging from sea level to 200 feet above sea level, low rainfall, and strong winds. The project area abuts the shoreline, and runs inland approximately 700 meters. The shoreline is composed of a low volcanic cliff composed of basaltic and a'a lava. There is no sandy beach.

Grasses are the dominant flora, with occasional stands of invasive species such as kiawe, koa-haole, and Christmas Berry. There are no known endangered plant or animal species within the project area.

Exhibit 2 contains photographs of the subject parcels.

The lots are accessed from Akoni Pule Highway through the Ranch at Puakea subdivision. They are currently undeveloped.

The public uses the shoreline for fishing. Other than this, there are no known cultural practices that use these parcels, not any known cultural, archaeological, or historical sites on the parcels. When the lots were created in 2002 Parker Ranch reached a public access agreement with the County that identified and protected public access to this area. The agreement created a 10-foot wide public access corridor along the shoreline.

#### **PROPOSED USE:**

The applicants are proposing to consolidate the three lots and subdivide them into three lots of 28.565 acres (Lot 12-A), 24.114 acres (Lot 11-A), and 25.745 acres (Lot 10-B). Each of the new lots would have shoreline frontage. **Exhibit 3** shows the proposed new boundaries of the lots.

This would increase the number of parcels in the Conservation District from two to three. This would put the proposal in violation of Hawai'i Revised Statutes (HRS) §13-5-30 PERMITS, GENERALLY, Criterion 7: *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

To remedy this, the applicants propose to record a deed restriction on the northern and southern lots (Lots 12-A and 10-B) that would prohibit the construction of any homes within the Conservation District.

No development is being proposed in this application.

#### **SUMMARY OF COMMENTS:**

The Office of Conservation and Coastal Lands referred the application to the following agencies for review and comment: Office of Hawaiian Affairs; the Hawai'i County Planning Department; Hawai'i Board Member; Department of Land and Natural Resources (DLNR) Land Division & Historic Preservation Division; and various community groups operating collectively as *Preserving Kohala Coast Open Space*.

A notice of the application was placed in the Office of Environmental Quality Control's *Environmental Notice* on December 8, 2006. In addition, a copy was available for review at the Kailua-Kona Public Library.

Comments were received from the following agencies:

Office of Hawaiian Affairs (OHA)

OHA appreciates the commissioning of an Archaeological Inventory Survey.

County of Hawai'i Planning Department

The Department has determined that the proposal is exempt from needing a Special Management Area permit.

Preserving the Kohala Coast

North Kohala wishes to preserve the lands makai of Akone Pule from development. These lands formerly were part of Parker Ranch. Community members wished for the lands to become part of a land trust, but they were sold to private owners instead. The group would prefer that no development occurs anywhere in the lots, and feels that this proposal is a precursor to future development.

Applicant's Response

*Applicant feels that it is unreasonable for private landowners in the area to refrain from building on their lands, and points that the area is south of a full developed subdivision and east of one that is being developed. Applicant states that the landowners will not unilaterally relinquish their legal property rights.*

OCCL Response

*Staff notes that the applicant will be putting a deed restriction on two of the lots to keep development out of the Conservation District portions of the land. OCCL does not have jurisdiction over lands in the State Land Use Agriculture District.*

**ANALYSIS:**

Following review and acceptance for processing, OCCL notified the applicant's by letter dated November 28, 2006, that:

1. The consolidation and re-subdivision was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the protective subzone*, P-11 *SUBDIVISION OR CONSOLIDATION OF PROPERTY*, (D-1) *Subdivision of property into two or more legal lots of record which serves a public purpose and is consistent with the objectives of the subzone*. The final decision as to whether to grant or deny the permits lies with the Board of Land and Natural Resources.
2. Pursuant to HAR §13-5-40 *Hearings*, a public hearing was not be required.
3. This project was exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8.

**§13-5-30 CRITERIA:**

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The proposed consolidation and subdivision does not entail any new land use, and does not conflict with these objectives.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

Pursuant to HAR §13-5-14 the objective of the objective of the Resource Subzone is to designate open space where specific conservation uses may not be defined, but where urban use may be premature.

The proposal does not involve a change in land use, nor will it create the potential for a change in land use. As the land owner will be placing deed restrictions on two of the three lots the proposal will not lead to increased urbanization of Conservation District land.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The Hawai'i County Planning Department has determined that the proposal is exempt from the definition of development, and will not need a Special Management Area permit

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The consolidation and re-subdivision does not involve a land use.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The consolidation and re-subdivision does not involve a land use.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The action shall have no physical impact on the land. Therefore staff is of the opinion that the natural beauty and open space characteristics of the portions of the lots within the Conservation District will be maintained.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The consolidation and re-subdivision will increase the number of potentially developable lots in the Conservation District from two to three. The landowners are willing to put a

deed restriction on two of the lots prohibiting development within the Conservation District on those two lots. This will, in effect, reduce the number of developable lots in the District from two to one.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff is of the opinion that the proposed subdivision will not be materially detrimental to the public health, safety and welfare.

**DISCUSSION:**

The applicants are proposing to consolidate and re-subdivide Conservation District land from three lots into three. The Conservation District boundary runs approximately 300 feet from the shoreline in this ahupua'a. Two of the current lots front the shoreline, placing them partly in the Conservation District. One lot does not front the shoreline and thus is entirely outside of the Conservation District.

The proposal would create three lots of 28.565, 24.114, and 25.745 acres. Each would have shoreline frontage, thus increasing the number of potentially developable lots in the Conservation District from two to three.

*The proposal thus has the potential to increase the intensity of land use.* To mitigate this, the landowners are willing to place deed restrictions on the northern and southern lots prohibiting any construction in the Conservation District lands. This would, in effect, reduce the number of developable lots in the Conservation District from two to one.

OCCL supports this mitigation measure in that it decreases the potential for development in the Conservation District.

Staff therefore recommends:

**RECOMMENDATION:**

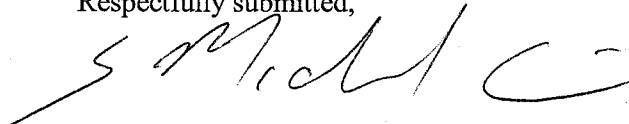
Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this application subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall provide a Declaration of Restrictive Covenant on Lots 12-A and 10-B prohibiting any construction within the Conservation District on these lots; this

Declaration must meet the approval of OCCL and the State Attorney General's Office, after which the applicant will file the Declaration with the State Bureau of Conveyances.

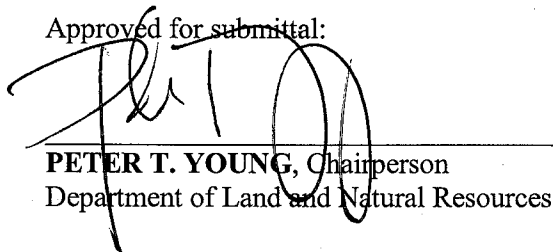
- 4) The applicant shall provide documentation (e.g. book and page or document number) that this permit approval with the Restrictive Covenant has been placed in recordable form as a part of each deed instrument;
- 5) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 6) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
- 7) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 8) The applicant shall obtain the approval of the County of Hawai'i for the consolidation and re-subdivision through the applicable County department;
- 9) Other terms and conditions as may be prescribed by the Chairperson; and
- 10) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

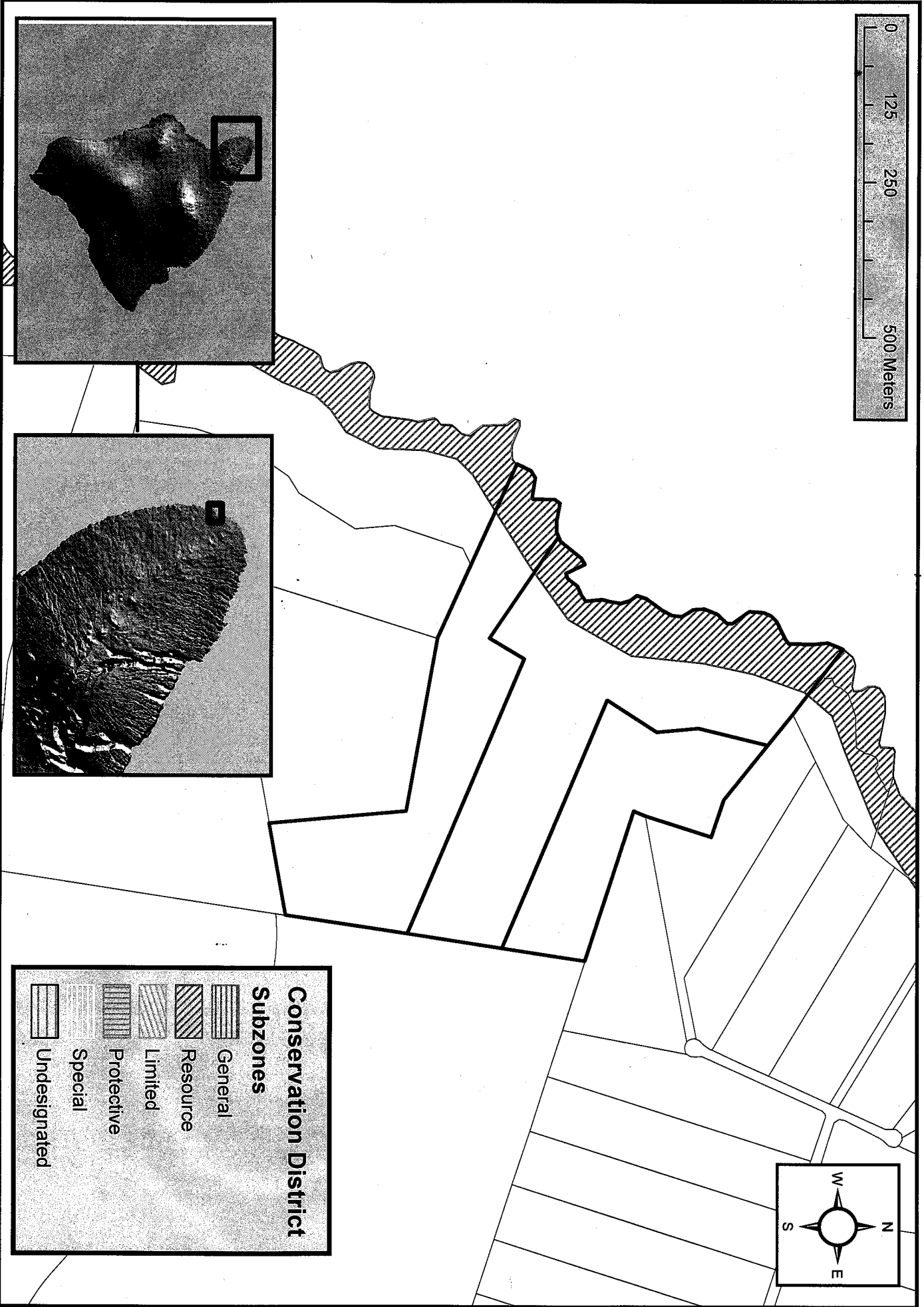
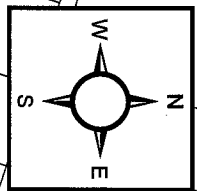
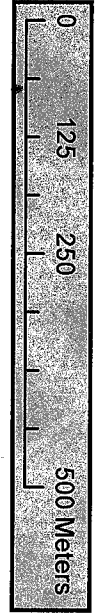
Respectfully submitted,



Michael Cain, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:

  
**PETER T. YOUNG**, Chairperson  
Department of Land and Natural Resources



**Conservation District Subzones**

	General
	Resource
	Limited
	Protective
	Special
	Undesignated

## SITE PHOTOGRAPHS



Shoreline area looking north (above) and south (below)

